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Supreme Court, U.S.
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No. 97-___ OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, which confers federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization," permits a union to sue in federal court to declare a collective bargaining agreement voidable in the absence of any alleged violation of the agreement?

RULE 29.6 STATEMENT

Petitioner is the AVCO Corporation.* Textron, Inc. is the parent of petitioner AVCO Corporation. All of AVCO Corporation's subsidiaries are wholly owned.

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* The complaint identifies the defendant as Textron Lycoming Reciprocating Engine Division, AVCO Corporation. This is incorrect. App. 14a. The correct name of the division in question is Textron Lycoming. Moreover, because Textron Lycoming is an unincorporated division of the AVCO Corporation, the actual defendant in this case is the AVCO Corporation. *See, e.g.*, T. Bjur & C. Slezak, *Fletcher Cyclopedia of the Law of Private Corporations* § 4473, at 78 (rev. ed. 1992); 19 C.J.S. *Corporations* § 714, at 367 (1990).

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PETITION FOR A WRIT OF CERTIORARI

Textron Lycoming Reciprocating Engine Division, AVCO Corporation[1] ("Textron" or "petitioner") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the Third Circuit (App. 1a) is reported at 117 F.3d 119. The order containing the opinion of the district court (App. 14a) is unreported.

JURISDICTION

The Third Circuit issued its opinion on July 7, 1997. Judgment (App. 19a) was entered on July 29, 1997. This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947 provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). Section 301 is reprinted in its entirety at App. 21a.

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[1] *See supra* p. ii n.* (discussing the correct name of petitioner).

STATEMENT[2]

Congress has enacted a "complex and interrelated federal scheme of law, remedy, and administration" to regulate labor relations in this country and entrusted a "specific and specially constituted tribunal," the National Labor Relations Board (NLRB), with primary authority for implementing and developing this system. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242-243 (1959) (quotation omitted). Recognizing the strong congres-sional desire for uniform application of federal labor law, this Court has held that, wherever conduct arguably constitutes an unfair labor practice, "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *Id.* at 245.

While the Board's primary function is to regulate the process of collective bargaining, it has no authority to enforce collective bargaining agreements. *See, e.g., Dowd Box Co. v. Courtney*, 368 U.S. 502, 510-11 (1962). In the area of contract enforcement, Congress carved out a limited exception to the Board's generally exclusive jurisdiction over the collective bargaining process and "ma[d]e collective bargaining agreements enforceable only in the courts." *Id.* at 511. Accordingly, Section 301(a) of the Labor-Management Relations Act of 1947 grants federal courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185(a).

This case presents an important question: whether Section 301 confers jurisdiction over suits in which no contractual violation is alleged but disputes of a "contractual nature" are present. The decision below — which permits suits under Section 301 even where no contractual violation is alleged — creates a broad area of overlapping jurisdiction, and potential conflict, between the

[2] Because the district court dismissed the complaint for lack of subject matter jurisdiction based upon a facial challenge, the Statement treats the facts alleged in the complaint as true. *See, e.g.*, 2 *Moore's Federal Practice* § 12.30[4], at 12-38 (3d ed. 1997).

federal courts and the NLRB, thereby frustrating important congressional policies.

Background — Petitioner manufactures airplane engines at a plant in Williamsport, Pennsylvania. App. 2a. Respondent, Local 787 of the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), represents approximately 500 employees at that plant. App. 15a.

In 1993, before formal negotiations over a new collective bargaining agreement began, respondent requested any written reports, projections, or other documents concerning petitioner's future subcontracting. App. 3a. When formal negotiations began in January of 1994, the union renewed its request. App. 3a. Although petitioner allegedly did not supply any information concerning subcontracting,[3] the union did not pursue its request or otherwise raise the issue of subcontracting during the negotiations over the collective bargaining agreement. Complaint ¶ 13.

As a result of these negotiations, the parties agreed to continue in force a memorandum agreement concerning subcontracting. J.A. 116. That memorandum recognized petitioner's right to subcontract and required only that petitioner provide seven days notice of any subcontracting:

> If for general business reasons or because of the nature of the work, the Company desires to contract out work normally and historically performed by the production employees of the

[3] A factual dispute exists on this issue. In a submission to the NLRB on November 10, 1995 in connection with charges brought by respondent, *see infra* p. 4, petitioner provided a letter sent to respondent by petitioner in December 1993. In that letter, petitioner disclosed that it was currently considering outsourcing six categories of parts and that in the years ahead "every aspect of the manufacturing process will be examined to determine make or buy decisions." Letter from Frank X. Ratchford to Robert T. McHugh, Dec. 16, 1993, at 2, attached as Ex. A to Letter from Don A. Banta to Joseph Cionzynski, Nov. 10, 1995.

> Production and Maintenance Unit, the Union will be advised of such potential contract seven (7) working days prior to contracting out of the work. This seven (7) day period will provide an opportunity for the Union and the Company to discuss and look for alternative action to maintain said work in house.

J.A. 100. The new collective bargaining agreement, which incorporated the subcontracting memorandum, became effective on April 1, 1994 and expired on April 4, 1997. Complaint ¶ 3. That agreement included a no-strike clause.[4]

In June 1994, pursuant to the subcontracting agreement, petitioner announced that it was planning to subcontract out production of the parts formerly produced at its Williamsport plant. Complaint ¶ 15. Petitioner also informed the union that approximately half of the employees represented by it would be laid off. *Id.*

The Unfair Labor Practice Charges — In November 1994, the union filed an unfair labor practice charge with the National Labor Relations Board. Charge, *Textron Lycoming Reciprocating Engine Div.*, Case No. 4-CA-23285 (N.L.R.B. Nov. 22, 1994). In the charge, the union alleged that petitioner had "denied and/or failed to provide within a reasonable time, relevant information which was requested in connection with the subcontracting and/or movement of bargaining unit work." *Id.* On October 3, 1995, the union amended the charge to request a "declaration that the existing collective bargaining agreement is voidable at its option." Amended Charge, *Textron Lycoming Reciprocating Engine Div.*, Case No. 4-CA-23285 (N.L.R.B. Oct. 3, 1995) (Attachment A).

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[4] In the no-strike clause, respondent "agree[d] that there shall be no strikes, walkouts, sitdowns, production retardings, or other similar interruptions of, or interferences with, work during the term of this Agreement for any reason." J.A. 62. Petitioner similarly agreed that there would be no lockouts during the term of the collective bargaining agreement. J.A. 62. The expiration of the agreement has not eliminated the dispute between the parties.

The apparent purpose of this amendment was to enable the union to engage in — or, at least, threaten to engage in — a strike barred by the agreement's no-strike clause.

Although the Board agreed to issue a complaint, it refused to void the collective bargaining agreement. Instead, the Board sought an order preventing petitioner from enforcing the subcontracting memorandum and requiring petitioner to bargain in good faith about subcontracting. J.A. 118. The petitioner and the Board have reached a tentative settlement of the complaint, which respondent is currently appealing administratively.

The Proceedings Below — On November 16, 1995, nearly a year after filing unfair labor practice charges with the Board, the union filed a complaint in the United States District Court for the Middle District of Pennsylvania. The complaint bases federal jurisdiction on Section 301 and seeks compensatory damages, punitive damages, as well as a declaration "that the existing collective bargaining agreement between the parties is voidable at the option of the [union]." Complaint ¶ 16. The union also alleges, as it did before the Board, that in the negotiation of the 1994 agreement, it demanded documents concerning the company's plans to move or subcontract out bargaining unit work. *Id.* ¶ 5.

In addition, the complaint asserts that a representative of petitioner stated in January 1994 that he knew of no plans to subcontract out bargaining unit work, promised to ensure that his knowledge was correct, and then never raised the issue again. *Id.* ¶ 9; *see also* App. 3a. According to the complaint, during the negotiations which ended in March 1994, petitioner was formulating a secret plan to subcontract out all bargaining unit work. Complaint ¶ 11. The union contends that, if it had known about this plan, it would have made specific demands relating to subcontracting and would not have agreed to the no-strike clause in the collective bargaining agreement. App. 3a. Indeed, the union conceded before the district court that it was seeking to have the collective bargaining agreement declared voidable in order to be able to threaten to strike credibly. Pl. Surreply at 2.

Significantly, the union does not allege that petitioner violated the collective bargaining agreement.

The district court dismissed the complaint for lack of subject matter jurisdiction. App. 18a. The district court noted that Section 301 grants federal courts jurisdiction only over "[s]uits for *violation* of contracts between an employer and a labor organization." App. 17a (emphasis added). The district court did not, however, find any claim of a "violation of a contract between an employer and labor organization." App. 18a (quotation omitted). To the contrary, the district court found, the union was claiming that petitioner "negotiated in bad faith, a matter within the exclusive jurisdiction of the NLRB." App. 18a.[5]

Respondent appealed pursuant to 28 U.S.C. § 1291, and the Third Circuit reversed. Although it recognized that the First, Fourth and Seventh Circuits had held that jurisdiction under Section 301 is limited to suits alleging violations of a collective bargaining agreement, App. 7a-8a, the Third Circuit nonetheless found jurisdiction under Section 301 despite the absence of any alleged violations. App. 9a-11a. The court, largely ignoring the language of the statute, relied on the supposed purpose of Section 301. According to the Third Circuit, "by enacting § 301(a) Congress intended that courts resolve disputes of a contractual nature, including disputes over [a collective bargaining] agreement's very existence." App. 9a. Since a dispute over whether a contract was secured by fraudulent inducement "goes to the heart of the enforceability of the collective bargaining agreement between the parties," the Court concluded that Section 301 confers jurisdiction over the union's suit. App. 10-12a.

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[5] Because the district court found no subject matter jurisdiction over the case, it did not reach Textron's alternative argument that the complaint should be dismissed to the extent it alleges conduct subject to the grievance and arbitration procedures in the collective bargaining agreement. App. 4a; *see generally Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562-63 (1976).

The decision below found this conclusion buttressed by the fact that the union could have raised fraudulent inducement as a defense had petitioner sought to enforce the collective bargaining agreement. App. 12a. The Third Circuit did not see any reason to permit the union to raise fraudulent inducement as a defense to an enforcement action while prohibiting it from raising the same point in an anticipatory suit before any violation has occurred.

REASONS FOR GRANTING THE WRIT

Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, has been a key feature of federal labor law for half a century. That section provides federal courts with jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185(a). This case presents an important and recurring question concerning the scope of Section 301 not previously considered by this Court. All of the Section 301 cases previously before this Court have involved allegations of actual violations of a collective bargaining agreement.[6] The courts of appeals are hopelessly divided over whether Section 301 confers jurisdiction over anticipatory suits

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[6] In one case, this Court held that contract claims covered by the section may be brought in state court and if they could be brought in federal court under Section 301. *See Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962). In that case, the plaintiff union alleged that the company had announced it would not abide by a settlement agreement with the union and sought a declaration that "there existed a valid and binding collective bargaining agreement." 368 U.S. at 504. Thus, even though the union sought declaratory relief in that case, there was nonetheless an alleged violation of contract: a breach by anticipatory repudiation. *See, e.g., Roehm v. Horst*, 178 U.S. 1, 7 (1900) ("[W]here the contract is renounced before performance is due, and the renunciation is absolute and unequivocal, the injured party may treat the breach as complete and bring his action at once."); *see generally* Restatement (Second) of Contracts § 250 (1981).

where no violation has occurred. Because of the importance of this question, the decision below warrants review by this Court.

I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THE FIRST, FOURTH AND SIXTH CIRCUITS

More than forty years ago, Justice Frankfurter observed that Section 301 has "proved a fertile source of difficulty for the lower courts."[7] As this case demonstrates, Justice Frankfurter's observations remain true today. The interpretation of Section 301 in the decision below squarely conflicts with the interpretation in the decisions of at least three other courts of appeals. The existence of this conflict has been recognized not only by the court below, App. 7a-8a, but also by the Sixth and Tenth Circuits. *See McNally Pittsburg Inc. v. International Ass'n of Iron Workers*, 812 F.2d 615, 618 (10th Cir. 1987) (noting the "clear disagreement" among the federal courts); *Heussner v. National Gypsum Co.*, 887 F.2d 672, 676 n.2 (6th Cir. 1989) (noting the developing conflict among the circuits).

The decision below squarely conflicts with the decision of the First Circuit in *Hernandez v. National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972). In *Hernandez*, the First Circuit held that Section 301 of the Labor-Management Relations Act does not confer jurisdiction over a suit not alleging any violations of a collective bargaining agreement but instead seeking a declaration that the agreement was invalid. The plaintiffs in *Hernandez* sought to have a collective bargaining agreement declared "null and void" not because of any violation of the argument but rather because the agreement was not ratified or supported by the affected employees. *See* 455 F.2d at 1252. The First Circuit found that Section 301 did not confer jurisdiction over such claims. Section 301, the court observed, applies only to "'[s]uits

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[7] *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*, 348 U.S. 437, 439 (1955) (op. of Frankfurter, J.), *overruled by, Smith v. Evening News Ass'n*, 371 U.S. 195 (1962).

for *violation* of contracts between an employer and a labor organization.'" 455 F.2d at 1253 (quoting 29 U.S.C. § 185(a)) (emphasis in original).

The Sixth Circuit reached a similar conclusion in *Heussner v. National Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989). In that case, discharged employees sued under Section 301 to rescind a settlement agreement that reduced the employees' severance pay. *See* 887 F.2d at 674. Like the respondent here, the plaintiffs in *Heussner* asserted that the settlement agreement had been procured through fraud and that the employer had breached its duty to "supply relevant information" to the union. *Id.* at 675-76. Relying upon the plain language of the statute, the Sixth Circuit found that under Section 301 courts only "possess subject matter jurisdiction in cases involving an alleged violation of an existing collective bargaining contract." *Id.* at 676. The Sixth Circuit therefore held that federal courts "lack[ ] jurisdiction under Section 301(a) to invalidate" collective bargaining agreements. *Id.* In 1994, the Sixth Circuit reaffirmed this holding. *See Adcox v. Teledyne, Inc.*, 21 F.3d 1381, 1386 (6th Cir.), *cert. denied*, 513 U.S. 871 (1994) (noting that federal courts "lack[ ] jurisdiction to entertain a challenge under § 301 to the validity" of a collective bargaining agreement).

The Fourth Circuit interprets Section 301 similarly. In *A.T. Massey Coal Co. v. United Mine Workers Int'l*, 799 F.2d 142 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987), a corporation signed a collective bargaining agreement with the United Mine Workers. The Fourth Circuit found that a union suit to redress alleged violations of the agreement by the corporation's parent and affiliates fell within Section 301. *See* 799 F.2d at 146. The Fourth Circuit held, however, that a suit by the corporation's parent seeking a declaration that the collective bargaining applied only to the subsidiary was not within Section 301. *See id.* In the Fourth Circuit's view, a plaintiff "must allege breach of an existing collective bargaining contract in order to avail itself of jurisdiction under § 301 of the Act." *Id.* Since the parent corporation sought a declaration that "it was *not* bound by the [agreement]," the Fourth Circuit concluded that the parent

corporation had not "br[ought] itself under the explicit jurisdictional language of the Act." *Id.* (emphasis in original). The Fourth Circuit recently reaffirmed that under Section 301 federal courts "lack[ ] subject matter jurisdiction to decide the validity" of collective bargaining arguments. *Jones v. Union Carbide Chemicals & Plastics Co.*, No. 94-1145, 1995 WL 564404, at *2 (4th Cir. Sept. 25, 1995) (per curiam).

The Supreme Court of Oregon has adopted the same interpretation of Section 301. In *Corvallis Sand & Gravel Co. v. Hoisting Portable Eng'rs*, 419 P.2d 38 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967), the plaintiff claimed that the defendant-employer had obtained a collective bargaining agreement by coercion and sought rescission of the agreements. *See* 419 P.2d at 40. Asserting that its suit could have been brought in federal court under Section 301, the plaintiff also contended that its claim could not be preempted by the NLRB's jurisdiction over unfair labor practice claims. *See id.* at 43; *see also Dowd Box*, 368 U.S. at 510-11 (holding that state law claims falling within Section 301 are immune from *Garmon* preemption). The Oregon Supreme Court disagreed. It found Section 301 inapplicable because "[n]o substantive contract right [was] being asserted." *Corvallis*, 419 P.2d at 44. The Court went on to observe that "[t]o apply § 301(a) L.M.R.A. to suits to rescind labor contracts because of unfair labor practices in their procurement would open to regulation by courts almost the entire field of unfair labor practices." *Id.* In the Oregon Supreme Court's view, "if any significance is to be given to the words 'for violation of contracts' a suit such as the present one does not come within its embrace." *Id.*

The decision below cannot be reconciled with these rulings. Like the plaintiffs in *Corvallis*, *Hernandez*, *Heussner*, and *Massey*, respondent did not allege any contractual violations but instead sought a ruling that a collective bargaining agreement was invalid. The Third Circuit's ruling — that any "suit involving a dispute over [a collective bargaining] agreement's existence is subject to § 301(a) jurisdiction" (App. 9a) — squarely conflicts with the decisions of the First, Fourth, and Sixth Circuits and the

Oregon Supreme Court. Moreover, in citing and then rejecting both *Hernandez* and *Heussner*, the decision below expressly acknowledged this conflict. App. 7a.

As the court below also recognized, App. 10a, its decision is consistent with the Ninth Circuit's decision in *Rozay's Transfer v. Freight Drivers, Local 208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989). In *Rozay*, an employer alleged that it had been induced into signing an agreement by false representations. *See* 850 F.2d at 1324. The Ninth Circuit found jurisdiction over the claim under Section 301. In direct contrast to the First, Fourth and Sixth Circuits, the Ninth Circuit reasoned:

> Section 301 . . . applies not only to suits for breach of a collective bargaining agreement once it is duly formed, but also to suits impugning the existence and validity of a labor agreement, including those alleging improper conduct or mistake during the formation of the agreement.

Id. at 1326 (citations omitted). The Tenth Circuit has likewise refused to accept any "requirement of an alleged violation under § 301." *McNally Pittsburg*, 812 F.2d at 618 (finding jurisdiction over suit seeking declaration no contract exists).

Although the court below indicated that its decision conflicted with the position of the Seventh Circuit, App. 7a, that Circuit's position is, in fact, unclear. In the case cited in the decision below, *NDK Corp. v. Local 1550 of Commercial Workers Int'l Union*, 709 F.2d 491 (7th Cir. 1983), the Seventh Circuit found that it did not have jurisdiction over a suit seeking to rescind a collective bargaining agreement allegedly procured by fraud. *See* 709 F.2d at 492. Relying upon the statute's plain language, the Seventh Circuit held in *NDK Corp.* that Section 301 "provides jurisdiction for suits for violation of contracts but not for the determination of the validity of contracts where validity is the ultimate issue." *Id.* at 493. Five years later, a panel of the Seventh Circuit purported to overrule *NDK Corp.* and hold that "under § 301(a) any disputes about the meaning or validity of collective bargaining agreements come within the jurisdiction of

the federal courts." *International Bhd. of Elec. Workers, Local 481 v. Sign-Craft, Inc.*, 864 F.2d 499, 502 (7th Cir. 1988). The plaintiff in *Sign-Craft* did not, however, seek to invalidate a collective bargaining agreement; instead, the plaintiff claimed that the defendant had breached an agreement by anticipatory repudiation. *See id.* at 500; *see also supra* p.7 n.6. As a consequence, the Seventh Circuit's position remains unclear.

What is clear is that at least six circuits are evenly split over the question presented in this case. In 1988, after being invited by this Court to file a brief as *amicus curiae* in one of those cases, the Solicitor General suggested that this conflict would resolve itself. *See* Brief for the United States as Amicus Curiae, *Freight Drivers, Local 208 v. Rozay's Transfer*, No. 88-535, at 15-16 (U.S. Sup. Ct. March 17, 1989). This prediction has not proven correct. Since the Solicitor General's brief, the Sixth Circuit has issued its opinion in *Heussner*, the Ninth Circuit has reaffirmed its decision in *Rozay's Transfer*, *see International Bhd. of Teamsters v. American Delivery Serv.*, 50 F.3d 770, 773 (9th Cir. 1995), and the Fourth Circuit has expressly rejected an invitation to overturn its decision in *Massey*. *See Jones*, 1995 WL 564404, at *2 ("Appellants' citation to numerous decisions by other circuits . . . cannot change our decision . . . ."). In short, the lower courts are deeply and hopelessly divided over the proper treatment under Section 301 of suits that do *not* allege violations of collective bargaining agreements, and the only way in which this conflict will be resolved is through the intervention of this Court.

II. RESOLUTION OF THE CONFLICT IS IMPORTANT

The decision below, and the conflict it perpetuates, require the attention of this Court. If review is not granted, important federal labor policies will be seriously undermined.

First, in Section 301, Congress conferred jurisdiction on the federal courts over "[s]uits for violation of contracts." 29 U.S.C. § 18(a). As this Court has observed, this provision covers only "disputes that are governed by the terms of the collective

bargaining agreement itself." *Amalgamated Ass'n of Street, Electric Railway, & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 300-01 (1971). Plainly, Congress did not intend Section 301 to encompass all claims relating to collective bargaining agreements or even all claims relating to contract law. If Congress had, Section 301 would have conferred jurisdiction over all "suits *concerning* contracts between an employer and a labor organization," not just "[s]uits *for violation of* [such] contracts." 29 U.S.C. § 185(a) (emphasis added). By ignoring the clear statutory language in favor of an interpretation based on the perceived purpose of the statute, the decision below directly frustrates the plain intent of Congress.[8]

Second, in expanding the jurisdiction of the federal courts and correspondingly contracting the exclusive jurisdiction of the Board, the decision below undermines fundamental federal labor policies. Congress "deliberately plac[ed] the responsibility for applying and developing [the labor law's] comprehensive legal system in the hands of an expert administrative body rather than the federalized judicial system." *Lockridge*, 403 U.S. at 288 (footnote omitted). Responding to the perceived inadequacies of common-law courts and state legislatures, Congress enacted a "comprehensive national labor law." *Id.* at 286. It also organized a specialized and independent administrative agency

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[8] Not surprisingly, the decision below also misinterprets the purpose of Section 301. The Third Circuit assumed that Congress intended Section 301 to have a broad application to cover all "disputes of a contractual nature." App. 9a. The legislative history, however, makes clear that Congress understood Section 301 to "relate[ ] to suits by and against labor organizations for *breach* of collective bargaining agreements," not to all contractual disputes between labor and management. S. Rep. No. 105, 80th Cong., 1st Sess. 30 (1947), *reprinted in Legislative History of the Labor-Management Relations Act, 1947* 430 (1974); *see also Labor-Management Relations Act*, 93 Cong. Rec. 4390 (statement of Sen. Taft) (noting that Section 301 provides "for bringing a lawsuit for *breach* of contract")(emphasis added), *reprinted in Legislative History* 1133.

(the NLRB), "confide[d] primary interpretation and application of" those rules to that agency, and "prescribed a particular procedure" for the resolution of disputes within the agency's jurisdiction. *Garner v. Teamsters Local No. 776*, 346 U.S. 485, 490 (1953). Implicit in this "complex and interrelated federal scheme of law, remedy, and administration" is a congres- sional desire for the "'uniform application of its substantive rules.'" *Garmon*, 359 U.S. at 243 (quoting *Garner*, 346 U.S. at 490). Accordingly, this Court has held that, as a general rule, whenever a claim is even "arguably subject" to the NLRB's jurisdiction, "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *Id.* at 245.

Section 301 is a limited exception to this rule, an exception that grants jurisdiction to the federal courts only where a collective bargaining agreement has allegedly been violated. So limited, Section 301 does not disrupt Congress' carefully crafted system. Because violation of a collective bargaining agreement is not in and of itself an unfair labor practice within the Board's jurisdiction, *see NLRB v. C & C Plywood Corp.*, 385 U.S. 421, 426-27 (1966), and because the Board has no authority to award contractual damages or order specific performance, *see Dowd Box*, 368 U.S. at 511, court enforcement of collective bargaining agreements does not create a significant risk of either conflicting standards or conflicting remedies. *Cf. Belknap, Inc. v. Hale*, 463 U.S. 491, 510-11 (1983) (finding no threat of interference with the NLRB where the relief sought in state court cannot be secured before the NLRB); *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 197 & n.26 (1978) (same).

The rule adopted by the decision below, by contrast, encourages just such conflicts. As this case makes clear, the decision below creates a significant risk of conflicting standards of conduct. Before the NLRB, petitioner has contended that it made a core entrepreneurial decision to stop manufacturing parts for Lycoming airplane engines, that such decisions are not mandatory subjects of bargaining, and that petitioner was

therefore under no obligation to respond to respondent's request for information. In order to rule on petitioner's fraud claim, the trial court would have to consider the propriety of the conduct that petitioner contends falls within management's rights under federal labor law, thereby creating the risk that the trial court would find petitioner liable for having engaged in conduct the NLRB considers protected.

The decision below also creates the possibility of conflicting remedies. As this Court has observed, "Conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy." *Lockridge*, 403 U.S. at 287 ; *see also Garner*, 346 U.S. at 498-99 ("[W]hen two separate remedies are brought to bear on the same activity, a conflict is imminent."). Accordingly, this Court has prohibited state and federal courts "not only from setting forth standards of conduct inconsistent with the substantive requirements of the NLRB, but also from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act." *Wisconsin Dep't of Indus. v. Gould, Inc.*, 475 U.S. 282, 286 (1986). The decision below permits a party dissatisfied with the relief sought by the Board to seek a different and far more drastic remedy in federal court.[9] In short, by relying upon the supposed purpose of Section 301 and expanding that provision beyond the scope of its plain language, the decision below threatens to create both substantive and remedial conflicts and thereby to undermine

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[9] That appears to be the case here. Although respondent asked the NLRB to seek a "declaration that the existing collective bargaining agreement is voidable at [respondent's] option," Amended Change, *Textron Lycoming Reciprocating Engine Div.*, Case No. 4-CA-23285 (N.L.R.B. Oct. 3, 1995) (Attachment A), the Board refused to do so, no doubt realizing that respondent was attempting to escape no-strike clause in its collective bargaining agreement. *See* Pl. Surreply at 2; J.A. 118. As this Court has observed, one of Congress' purposes in enacting Section 301 was "promoting collective bargaining that ends with agreements not to strike." *William E. Arnold v. Carpenters Dist. Council*, 417 U.S. 12,18 (1974) (quotation omitted).

Congress' carefully constructed system for administering labor policy.

Third, the conflicting court of appeals decisions on the scope of Section 301 create the possibility that national labor agreements will be subject to different procedures and remedies depending upon where Section 301 suits are brought. Congress has, however, placed a high premium on "uniform application of its substantive rules." *Garner*, 346 U.S. at 490. As this Court noted in an analogous context, the mere possibility of conflicting decisions will "inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements" and thereby undermine Congress' goal of ensuring industrial peace and productivity. *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962). For this reason as well, the decision below, and the conflict it perpetuates, undermine federal labor policy.

Since enactment of the Labor-Management Relations Act of 1947, hundreds, if not thousands, of suits in federal court have been brought under Section 301, including more than a dozen in this Court alone. The specific question presented by this petition — whether a party may invoke Section 301 without alleging any contractual violation and seek instead to invalidate a collective bargaining agreement in federal court based upon conduct during the collective bargaining process that could be challenged before the NLRB — has been the subject of numerous reported decisions.[10] If the decision below were allowed to stand, parties

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[10] *See, e.g.*, *Union Carbide Chemicals & Plastics Co.*, 1995 WL 564404 at *2; *American Delivery Serv., Co.*, 50 F.3d at 773; *Heussner*, 887 F.2d at 675-76; *Rozay's Transfer*, 850 F.2d at 1326; *McNally Pittsburg*, 812 F.2d at 618; *A.T. Massey Coal Co.*, 799 F.2d at 146; *NDK Corp.*, 709 F.2d at 492-493; *Hernandez*, 455 F.2d at 1253; *Holland v. Cline Bros. Mining Co.*, 877 F. Supp. 308, 314 (S.D. W.Va. 1995); *Claire Mfg. Co. v. International Ladies Garment Workers' Union*, 667 F. Supp. 230, 231 (D. Md. 1987); *John S. Griffith Constr. Co. v. Southern Cal. Cement Masons Mgmt. Comm.*, 607 F. Supp. 809, 812 (C.D. Cal. 1984); *Local 435 of the United Automobile Workers Int'l v. General Motors Corp.*, 552 F. Supp. 395, 397-98 (D. Del. 1982), *modified*, 720 F.2d 664 (3d Cir. 1983) (mem. op.).

to the hundreds of collective bargaining agreements negotiated each year[11] could follow respondent's lead and seek relief in federal court that the NLRB has refused to grant. Such a result would threaten the authority of the NLRB and the carefully crafted scheme created by Congress to administer federal labor policy. The decision below warrants this Court's review.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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September 12, 1997

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[11] *See, e.g.*, U.S. Dep't of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Jan/Feb. 1996, at 12 (noting that more than 600 agreements affecting more than 2.4 million workers were scheduled to expire in 1996).

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
INTERNATIONAL UNION AND ITS LOCAL 787,

Appellant,

v.

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Appellee.

No. 96-7261

July 7, 1997

Before: BECKER, ROTH, Circuit Judges, BARRY, District Judge.*

OPINION OF THE COURT

BECKER, Circuit Judge.

This is an appeal by the United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") and its Local 787 from the district court's order dismissing its complaint against defendant Textron Lycoming Reciprocating Engine Division, Avco Corp. ("Textron"), for lack of subject matter jurisdiction under § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a). The district court found that the UAW's suit, which seeks a declaration that the collective bargaining agreement between the parties is voidable because it was secured by fraud in the inducement, was not a "[s]uit for violation

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*Honorable Maryanne Trump Barry, United States District Judge for the District of New Jersey, sitting by designation.

of [a] contract[ ] between an employer and a labor organization representing employees" within the meaning of § 301(a).

The UAW's appeal requires us to consider the scope of § 301(a) and our decision in *Mack Trucks, Inc. v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America*, 856 F.2d 579 (3d Cir. 1988). In that case, Mack Trucks sought a declaratory judgment that the collective bargaining agreement between it and the UAW was valid and enforceable, after the UAW had threatened to declare that there was no agreement between the parties. We held that § 301(a) conferred subject matter jurisdiction, finding that Mack Trucks' suit was a "suit for violation of [a] contract[ ]." *Id.* at 588.

In urging us to affirm the district court's order in this case, Textron contends that the suit filed by the UAW, here the party seeking to establish jurisdiction, can be distinguished from *Mack Trucks* in two respects. First, Textron points out that, while the very existence of the collective bargaining agreement was at issue in *Mack Trucks*, the UAW here acknowledges the existence of the agreement, and rather seeks a declaration that the collective bargaining agreement between the parties is *voidable* because it was secured by fraud in the inducement. Second, while in *Mack Trucks* the plaintiff wished to *enforce* the collective bargaining agreement, the UAW here seeks the power to *repudiate* the agreement, and Textron contends that § 301(a) does not supply jurisdiction under such circumstances. Because we disagree with Textron and conclude that the UAW's suit is a suit for violation of a contract under § 301(a) and *Mack Trucks*, we reverse.

I.

The complaint pleads the following facts which, since we deal with a motion to dismiss, we must take as true. The UAW represents employees at Textron's Williamsport, Pennsylvania plant, at which the company manufactures and assembles aircraft engines. This dispute arose from the collective bargaining agreement between the parties that covered the period from April 1, 1994 to April 1, 1997 and, more specifically, the negotiations that produced that agreement. Prior to the commencement of negotiations, the UAW submitted to Textron a request for information to aid it in its preparations for the negotiations. One section of the request asked whether Textron planned to subcontract out any of the work that was being done by the UAW members at the plant. The request specifically demanded any written documents that Textron had prepared on the subject of subcontracting. The UAW twice repeated this request. Prior to the negotiations, Textron never disclosed any information about plans to move bargaining unit work.

At the opening of the negotiations, the UAW renewed its request that Textron disclose any plans to contract out the work. Textron's vice-president for human resources, Frank Ratchford, stated that he had no knowledge of any plans for subcontracting, and also promised to make sure that his knowledge was complete. Neither Ratchford nor any other Textron official raised this issue again during negotiations. The parties reached a collective bargaining agreement in March 1994, which was ratified by the UAW membership at the beginning of April 1994.

The UAW's complaint alleges that, during the negotiations, Textron developed a plan to subcontract certain bargaining unit work at the plant, but never disclosed it to the UAW. According to the UAW's submission, the plan was presented to and approved by Textron's Board of Directors after the UAW membership ratified the collective bargaining agreement. The membership learned of the plan in June 1994.

The UAW alleges that about half of the union's members at the plant will lose their jobs as a result of Textron's subcontracting plan. It also represents that it would have used a different bargaining strategy had it known of the company's subcontracting plan. Instead, relying on the company's denial of any such plan, the union made no contract demands relating to the issue and did not pursue its request for information on the subject. More specifically, the union represents that it would not have agreed to the "no-strike" provision in the collective bargaining agreement had it known of the subcontracting plan.

The UAW's complaint in the District Court for the Middle District of Pennsylvania sought a declaratory judgment that the collective bargaining agreement was voidable at the UAW's option because it was secured by fraud in the inducement. The UAW relied on § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), for subject matter jurisdiction. Textron moved to dismiss the complaint on two grounds: (1) § 301(a) failed to confer subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), because the National Labor Relations Board ("NLRB") has exclusive jurisdiction over the UAW's claims of bad faith bargaining; and (2) the UAW failed to state a claim for relief that could be granted, Fed. R. Civ. P. 12(b)(6), because it had failed to exhaust the grievance process available under the collective bargaining agreement.

The district court granted Textron's motion based on the first ground, and, accordingly, did not reach the second question. The court first concluded that the UAW sought neither to enforce its rights under the collective bargaining agreement nor to show that a collective bargaining agreement existed; rather, the UAW had requested only a declaration that Textron had violated its duty to bargain in good faith under § 8 of the National Labor Relations Act ("NLRA") in negotiating the agreement. Having so characterized UAW's suit, the district court found that it lacked jurisdiction under § 301, and that the case was within the exclusive jurisdiction of the NLRB.

Moreover, the court reasoned that, while we held in *Mack Trucks* that a district court has jurisdiction to determine whether a collective bargaining agreement exists, that holding was "based on the principle that a district court may enforce the parties' rights under a CBA, but may not reach a claim which is independent of the contract." The court found that the UAW's claim was independent of the terms of the contract. It concluded finally that, "[i]n no way can UAW's claim be classified as one for 'violation of [a]contract [ ] between an employer and a labor organization' under § 301(a)." Order at 6.

The UAW appeals, contending that the district court erred in concluding that § 301(a), as interpreted by our decision in *Mack Trucks*, does not confer jurisdiction over its suit. Our review of the order dismissing the complaint is plenary. *See Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1044 (3d Cir. 1993).

II.

This case requires us to examine again the relationship between the jurisdiction of the NLRB and that of the federal district courts over labor cases. As we explained in *Mack Trucks*, 856 F.2d at 584-85, under the preemption doctrine of *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959), "[w]hen an activity is arguably subject to § 7 or § 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board."[1] The purpose of the *Garmon* preemption doctrine is both to ensure the uniform development of substantive labor law rules and to entrust the development of those rules to an administrative agency with particular labor law expertise. *See Vaca v. Sipes*, 386 U.S. 171, 178-81 (1967); *Mack Trucks*, 856 F.2d at 584.

This doctrine, however, "has never been rigidly applied to cases where it could not fairly be inferred that Congress intended exclusive jurisdiction to lie with the NLRB." *Vaca*, 386 U.S. at 179. In § 301(a) of the Labor Management Relations Act, Congress "carved out" such an exception to the exclusive jurisdiction of the NLRB over cases arguably subject to § 7 or § 8 of the NLRA. *Id.* This section provides: "Suits for violation of contracts between an employer and a labor organization representing employees . . . may be brought in any district court of the United States having jurisdiction over the parties." 29 U.S.C. § 185(a). Hence, a federal district court has jurisdiction over

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[1] Section 7 of the NLRA concerns the right of employees to organize and to engage in collective bargaining, 29 U.S.C. § 157, and § 8 prohibits both employers and unions from committing "unfair labor practices" as defined in the statute, *id.* § 158.

suits "for violation of contracts between an employer and a labor organization representing employees" under § 301(a) even if the claimed harm may arguably constitute an unfair labor practice under the NLRA. Under these circumstances — when the challenged practice both violates the collective bargaining agreement and is arguably subject to the NLRA — the federal district courts and the NLRB are said to share "concurrent jurisdiction" over the suit. *Mack Trucks*, 856 F.2d at 585. In other words, the NLRB retains exclusive jurisdiction over a claim only when the challenged conduct is an unfair labor practice that is not also subject to § 301(a) jurisdiction.

The purpose of § 301(a) was to encourage the judicial enforcement of collective bargaining agreements. In enacting § 301, Congress recognized the importance, for promoting industrial peace, of "'assuring the enforceability of [collective bargaining agreements]' in the courts." *Id.* at 587 (quoting *Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962)). Moreover, § 301 "authorizes federal courts to fashion a body of law for the enforcement of . . . collective bargaining agreements," *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 451 (1957), and, accordingly, encourages the development of a such a body of law. As the Supreme Court has explained, "[t]he strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976).

III.

In *Mack Trucks*, we considered whether § 301(a) supplied subject matter jurisdiction over suits about the very *existence* of a collective bargaining agreement, or whether that section was limited to suits that posited the existence of the agreement and merely alleged a breach of that agreement. The UAW and Mack Trucks had reached an oral agreement about the terms of a collective bargaining agreement. While the parties were negotiating

contract language to reflect the oral agreement, the UAW filed a grievance alleging that Mack Trucks had unilaterally implemented changes to that agreement. Soon after, the union threatened that, unless the parties settled their disputes and executed a written agreement within a certain period of time, it would declare the agreement void. 856 F.2d at 582-83. Mack Trucks filed suit in federal district court pursuant to § 301(a) seeking a declaratory judgment that the new collective bargaining agreement was valid and enforceable.

The UAW, in that case *challenging* § 301(a) jurisdiction, responded that the court lacked jurisdiction because the suit did not concern a contract claim, but rather implicated only the duties under the NLRA to bargain collectively and in good faith and to reduce the terms of an oral agreement to writing, which are subject to the exclusive jurisdiction of the NLRB. We rejected this argument, noting that even if a suit is subject to the NLRB's jurisdiction, we must determine whether it is also subject to § 301(a) jurisdiction. We found further that Mack Trucks' suit did not turn "*solely* on violations of good faith bargaining, or the duty to execute an agreement . . . which would trigger the NLRB's exclusive jurisdiction." *Id.* at 586 (citations omitted and emphasis added).

We then addressed the central question, whether "suits for violation of contracts" included suits concerning the *validity* of a labor agreement, or whether § 301(a) jurisdiction was limited to suits alleging violations of particular contractual provisions in an existing collective bargaining agreement. We noted that several courts of appeals have limited jurisdiction to suits alleging a breach of a particular provision of a collective bargaining agreement. *See A.T. Massey Coal Co. v. International Union, United Mine Workers of America*, 799 F.2d 142, 146 (4th Cir. 1986); *NDK Corp. v. Local 1550 of Commercial Workers Int'l Union*, 709 F.2d 491, 492-93 (7th Cir. 1983); *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972).

Because § 301(a) "is not free from ambiguity, we interpret[ed] § 301(a) in light of its legislative history, congressional intent,

and underlying policies." *Mack Trucks*, 856 F.2d at 586. In view of these sources, we first concluded that limiting §301(a) jurisdiction to suits that presume the existence of a labor contract "ignores Congress' broader concern that the courts — as opposed to the NLRB — be granted authority to decide disputes of a contractual nature." *Id.* at 588. We held that:

> When, as here, a party seeks enforcement of a labor agreement, and the other party denies the contract's existence, the filing party's declaratory judgment action constitutes an 'enforcement' action. Congress intended that contractual disputes be resolved by the courts applying 'usual processes of the law.' These principles of law apply equally to cases involving breach of an acknowledged contract and those involving a dispute over the agreement's existence.

Id. (citation omitted). In so holding, we distinguished prior cases in which we had found no § 301 jurisdiction on the ground that the claims in those cases were each somehow independent of the collective bargaining agreement. *Id.* at 589. For example, in one case, the plaintiffs claimed that their collective bargaining agreement conflicted with a *pre-agreement* contract of hire. *See Leskiw v. Local 1470, Int'l Bhd. of Elec. Workers*, 464 F.2d 721 (3d Cir. 1972); *see also Adams v. Budd*, 349 F.2d 368 (3d Cir. 1965); *Medlin v. Boeing Vertol Co.*, 620 F.2d 957 (3d Cir. 1980).

IV.

A.

The UAW, back before us and this time trying to *establish* jurisdiction, contends that § 301(a) confers federal jurisdiction over its complaint, characterizing *Mack Trucks* as holding that § 301(a) jurisdiction exists for suits involving questions about the enforceability of a collective bargaining agreement. Textron responds that the district court properly dismissed the UAW's complaint for lack of subject matter jurisdiction under § 301(a) and *Mack Trucks*. First, Textron points out that *Mack Trucks* dealt with whether a collective bargaining agreement actually *existed* between the parties. Because the UAW's claim here is

that the collective bargaining agreement is *voidable* (but not void) because it was secured by fraud in the inducement, and the UAW has acknowledged the existence of the agreement, *Mack Trucks* does not, Textron submits, compel the conclusion that § 301(a) confers jurisdiction. Second, even if *Mack Trucks* establishes § 301(a) jurisdiction for some suits that concern the enforceability of a collective bargaining agreement, the argument continues, § 301(a) supplies jurisdiction only when a party seeks to *enforce* a collective bargaining agreement but not when a party seeks to *repudiate* one, as in this case.

We agree with the UAW, and conclude that § 301(a), as interpreted by *Mack Trucks*, confers jurisdiction over the UAW's fraudulent inducement suit. Taking up first Textron's contention that *Mack Trucks* does not supply jurisdiction when the plaintiff seeks to repudiate the agreement, we believe that the language of *Mack Trucks* itself — that a suit "involving a dispute over the agreement's existence" is subject to § 301(a) jurisdiction — compels the result that a party challenging an agreement's existence can establish § 301(a) jurisdiction.[2]

Moreover, in *Mack Trucks*, we distinguished a case in which the Fourth Circuit held, in a consolidated appeal, that § 301(a) supplied jurisdiction over a union's suit for a declaration that an existing collective bargaining agreement applied to particular employers, but not to an employer's suit challenging the existence of that agreement. *See A.T. Massey Coal Co.*, 799 F.2d at 146. We stated that this "view fails to articulate a legal basis to justify jurisdiction in the union case, but not in the employer's case." *Mack Trucks*, 856 F.2d at 588 n.10.

Additionally, we see no reason why the rationale behind *Mack Trucks* — that by enacting § 301(a) Congress intended that the

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[2] We acknowledge as much recently when we stated that the "basis of Section 301 jurisdiction in *Mack*" was a claim that "no contract exist-[ed]." *Beverly Enterprises—Pennsylvania, Inc. v. District 1199C National Union of Hospital and Health Care Employees*, 90 F.3d 93, 95 (3rd Cir. 1996).

courts resolve disputes of a contractual nature, including disputes over the agreement's very existence — does not also apply when the party who files suit seeks a declaration that the agreement is not enforceable. Our conclusion is buttressed in policy terms by the UAW's argument that jurisdiction lies in this case because the union would have raised the fraudulent inducement claim as an affirmative defense had it refused to abide by the collective bargaining agreement and Textron had filed suit under § 301 to enforce it: the development of a consistent body of law in this area depends, in part, on federal court jurisdiction over all claims of a contractual nature, no matter who first resorts to court.

Textron also seeks to distinguish between suits concerning the *existence* of an agreement and those concerning its *enforceability*. As the foregoing discussion suggests, we do not believe that there is any difference under *Mack Trucks* between suits about the existence of a collective bargaining agreement, i.e., seeking declaratory judgment that the agreement is *void*, and suits, like this one, about the enforceability of a collective bargaining agreement, i.e., seeking declaratory judgment that an agreement is *voidable* at the will of that party. The UAW's suit clearly arises from a contractual dispute: a dispute about whether a contract was secured by fraudulent inducement is as much a contract dispute as a dispute about a contract's existence. As we explained in *Mack Trucks*, Congress intended that such suits be "resolved by the courts applying 'usual processes of the law.'" *Mack Trucks*, 856 F.2d at 588.

The Ninth Circuit has already held that § 301(a) confers jurisdiction over fraudulent inducement claims. *See Rozay's Transfer v. Local Freight Drivers*, 850 F.2d 1321, 1326 (9th Cir. 1988) ("Section 301 . . . applies not only to suits for breach of a collective bargaining agreement once it is duly formed, but also to suits impugning the existence and validity of a labor agreement, including those alleging improper conduct or mistake during the formation of the agreement."). (citations omitted)); *International Bhd. of Teamsters v. American Delivery Serv. Co.*, 50 F.3d 770, 773-74 (9th Cir. 1995).

For the foregoing reasons, we conclude that § 301(a) supplies jurisdiction over the UAW's suit alleging that Textron secured the collective bargaining agreement between the parties by fraud in the inducement.

B.

We are also unpersuaded by Textron's contention that the UAW's suit does not give rise to § 301(a) jurisdiction because it arises from pre-contract rights, that is, rights that are "independent" of the collective bargaining agreement. It bases this conclusion on its understanding that the UAW's claims stem from the *negotiation* of the agreement, not from an alleged violation of the terms of the agreement itself, and as such, allege only a violation of the duty to bargain in good faith under the NLRA. In making this argument, Textron relies on several cases which we distinguished in *Mack Trucks*, *see* 856 F.2d at 589, in which we held that § 301(a) did not provide jurisdiction. *See Medlin v. Boeing Vertol Co.*, 620 F.2d 957 (3d Cir. 1980); *Leskiw v. Local 1470, Int'l Bhd. of Elec. Workers*, 464 F.2d 721 (3d Cir. 1972); *Adams v. Budd Co.*, 349 F.2d 368 (3d Cir. 1965). In essence, Textron contends that the UAW's claim is more akin to the pre-*Mack Trucks* cases than it is to the suit in *Mack Trucks*.

In *Adams*, the plaintiffs, employees subject to a collective bargaining agreement, sought jurisdiction under § 301(a) to press the claim that the union and Budd had conspired, in negotiating the collective bargaining agreement, to deprive them of rights contained in their pre-collective bargaining agreement "contracts of hire." Recognizing that these plaintiffs did not allege a violation of the collective bargaining agreement, but rather a "violation by a labor contract of rights which they assert were independently, and pre-agreement, vested in them by their 'contract of hire,'" we held that the plaintiffs had not established § 301(a) jurisdiction. *Adams*, 349 F.2d at 370; *accord Leskiw*, 464 F.2d at 723; *see also Medlin*, 620 F.2d at 962 (refusing to exercise jurisdiction under § 301(a) where the plaintiffs' claims were based on rights inde-pendent of the collective bargaining

agreement: "[T]hese were not rights arising in any way under the collective bargaining agreement.").

We disagree with Textron, because the UAW's suit is not akin to the pre-*Mack Trucks* cases. As we characterized them in *Beverly Enterprises,* those cases held "that federal courts lack Section 301 jurisdiction over challenges to contracts on the basis that they conflicted with the NLRA or some other external agreement." *Beverly Enterprises-Pennsylvania, Inc. v. District 1199C National Union of Hospital and Health Care Employees,* 90 F.3d 93, 95 (3d Cir. 1996) (affirming dismissal of a complaint where the plaintiff sought only a declaration that a clause in the collective bargaining agreement violated § 8(a)(3) of the NLRA). We thus reject Textron's contention that the plaintiffs in *Adams* failed to establish § 301(a) jurisdiction because their claim turned solely upon adverse effects arising from the *negotiation* of the collective bargaining agreement. While we agreed with the defendant union's argument in *Adams* that the suit had to do with the negotiation of the agreement rather than whether the agreement had been breached, *see Adams,* 349 F.2d at 369, our conclusion that § 301(a) did not confer jurisdiction was based on the fact that the plaintiffs' suit alleged a violation of their rights contained in a pre-agreement contract, not on the fact that the plaintiffs' claim concerned the negotiations rather than the collective bargaining agreement itself.

Contrary to the pre-*Mack Trucks* line of cases, the UAW's claim that the collective bargaining agreement was secured by fraud in the inducement arises not out of the NLRA or another contract, but out of the collective bargaining agreement itself. The claim alleges flaws in the basic formation of the collective bargaining agreement, and its resolution is integral to the question whether the agreement is enforceable. In other words, Textron's allegedly fraudulent conduct goes to the heart of the enforceability of the collective bargaining agreement between the parties. Thus, the UAW is seeking to enforce rights that exist under the collective bargaining agreement.

In short, the claim here can be adjudicated without consideration of rights possessed by the parties under any other agreement or the NLRA. As such, this case clearly does not fall within the pre-*Mack Trucks* line of cases. Hence, even if the UAW's claim could arguably constitute an unfair labor practice under § 7 or § 8 of the NLRA, the UAW's claim is not solely a claim under the NLRA, and is subject to the concurrent jurisdiction of both the federal district courts and the NLRB.[3]

The order of the district court dismissing the complaint for lack of subject matter jurisdiction will be reversed and the case remanded for further proceedings.[4]

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[3] In this regard, we note that it is not clear that the NLRB actually would have jurisdiction over the UAW's fraudulent inducement claim. According to the UAW, the duty to bargain in good faith under §§ 8(a)(5) and 8(d) of the NLRA is qualitatively different from its fraud in the inducement claim. While the claims of bad faith bargaining and of fraudulent inducement may overlap both factually and legally, they are not identical.

[4] Textron has also argued that the UAW's complaint must be dismissed because the union failed to exhaust the grievance procedures contained in the collective bargaining agreement before filing suit. The district court did not reach this issue when it dismissed the complaint, and should do so on remand.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AMERICA, and ITS LOCAL 787, Plaintiff,	: No. 4: CV-95-1918 : JUDGE McCLURE
v.	
TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP., Defendant	

ORDER

March 21, 1996

BACKGROUND:

On November 16, 1995, plaintiff United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 787 ("UAW") initiated this action with the filing of a complaint pursuant to the National Labor Relations Act and the Labor Management Relations Act, 29 U.S.C. §§ 141 et seq. UAW alleges that defendant Textron Lycoming Reciprocating Engine Division, Avco Corp. (misnamed in the complaint; referred to as "Textron" hereinafter), fraudulently induced UAW to enter into a collective bargaining agreement. UAW seeks a declaration by the court that the collective bargaining agreement therefore is voidable at the option of UAW.

Before the court is a motion by Textron to dismiss pursuant to Fed. R. Civ. P. 12 (b) (l), (6).

DISCUSSION:

I. STANDARD OF REVIEW

A complaint must be dismissed under Fed. R. Civ. P. 12 (b) (1) if the court lacks jurisdiction over the subject matter. Subject matter jurisdiction is the "[p]ower of a particular court to hear the type of case that is then before it," Black's Law Dictionary 854 (6th ed. 1990), as distinguished from *in personam* and *in rem* jurisdiction.

Subject to certain congressional restrictions, the subject matter jurisdiction of a federal district court extends to cases arising under the Constitution, laws, and treaties of the United States. U.S. Const. art. III, § 2, cl. l; 28 U.S.C. § 1331. A complaint should not be dismissed for lack of jurisdiction if it reveals any grounds for assertion of jurisdiction. *Doran v. Lee*, 287 F. Supp. 807, 813 (W.D. Pa. 1968).

A motion to dismiss under Fed. R. Civ. P. 12(b) (6) admits the well pleaded allegations of the complaint, but denies their legal sufficiency. *Hospital Building Co. v. Trustees of the Rex Hospital*, 425 U.S. 738, 740 (1976). "It is the settled rule that 'a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Leone v. Aetna Casualty & Surety Co.*, 599 F.2d 566, 567 (3d Cir. 1979) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, (1957)). The complaint must be read in a light most favorable to the plaintiff with every doubt resolved in plaintiff's favor. *In re Arthur Treacher's Franchise Litigation*, 92 F.R.D. 398, 422 (E.D. Pa. 1981).

II. FACTS ALLEGED IN THE COMPLAINT

According to the complaint, UAW is a labor organization which is the exclusive bargaining representative for the employees of Textron's facilities in Williamsport, Lycoming County, Pennsylvania. Textron manufactures aircraft engines, employing approximately 500 employees in and around Williamsport. UAW

and Textron are parties to a collective bargaining agreement ("CBA") which covers the time period from April 1, 1994, to April 4, 1997.

Prior to entering into the CBA, the parties entered into negotiations concerning its terms. UAW demanded certain information during that process, including a demand that Textron disclose whether it intended to move or subcontract bargaining unit work then performed at its Williamsport facilities. Textron disclosed no such plans. In fact, an official from Textron denied that any such plan was under consideration.

However, during the time of the negotiations, Textron in fact was planning to subcontract a substantial part of its parts production operations. Implementation of the plan could result in the layoff of about half of the employees represented by UAW at Textron's Williamsport plant. The plan was not disclosed during the negotiations, thereby keeping the issue out of the negotiations.

The secret plan to subcontract work was adopted formally by the Textron Board of Directors after UAW agreed to and ratified the CBA for the 1994 - 1997 period. The plan and projected loss of employees was announced to UAW and its members on June 2, 1994. UAW would not have agreed to the CBA had the information regarding the subcontracting been made available to it.

III. DEFENDANT'S ARGUMENTS

Textron proffers two basic arguments as the reasons for which dismissal is appropriate. First, Textron contends that the court does not have jurisdiction over a matter concerning the negotiation of the CBA because such matters are within the exclusive province of the National Labor Relations Board. Also, Textron contends that UAW has failed to exhaust its administrative remedies. Because we find no jurisdiction, we will not reach the 'question of administrative remedies.

IV. JURISDICTION UNDER § 301

Both parties cite two primary authorities which govern disposition of Textron's motion to dismiss. The first is § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), and the second is *Mack Trucks, Inc. v. International Union, United Auto-mobile, Aerospace and Agricultural Implement Workers of America, UAW*, 856 F.2d 579 (3d Cir. 1988).

Under § 301(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

This case involves an action based on the negotiation of the CBA, not for violation of the CBA, so that this case does not fall under § 301(a). UAW argues, however, that federal district courts have jurisdiction over cases involving the existence of a CBA, and that it is seeking a declaration that no CBA exists.

Actually, UAW concedes that a CBA exists. Complaint at 2 ¶ 3. Moreover, although the Third Circuit in *Mack Trucks* discussed at length the fact that a district court has jurisdiction to determine whether a CBA exists, its reasoning was based on the principle that a district court may enforce the parties' rights under a CBA, but may not reach a claim which is independent of the contract. 856 F.2d at 589. In this case, UAW's claim is independent of the terms of the contract. *See esp. Medlin v. Boeing Vertol Co.*, 620 F. 2d 957, 962 (3d Cir. 1980) (no jurisdiction under § 301(a) when rights did not arise under CBA).

The plainest statement of our holding is set forth in *Mack Trucks* itself: "[W]e do not find that Mack's suit turns solely on violations of good faith bargaining, or the duty to execute an

agreement, *see* §§ 158 (a) (3), (5), (d), which would trigger the NLRB's exclusive jurisdiction." 856 F.2d at 586. Here, UAW's suit turns solely on in alleged violation of good faith bargaining. It is the remedy it seeks, i.e. a declaration that the CBA is voidable, and not the cause of action itself, that raises the question of the existence of a valid agreement.

In short, UAW is not seeking in any way to enforce its rights under the CBA, or to show that a valid CBA exists (which would make the enforcement of its terms a matter of law). Rather, it is attempting to show that Textron negotiated in bad faith, a matter within the exclusive jurisdiction of the NLRB. That UAW seeks as a remedy to render the CBA voidable does not alter the fundamental nature of the suit as one based on bad faith. In no way can UAW's claim be classified as one for "violation of [a] contract[ ] between an employer and a labor organization" under § 301(a).

Textron's motion to dismiss under Rule 12 (b) (1) will be granted.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The motion (record document no. 2) by defendant Textron to dismiss for lack of subject matter jurisdiction is granted.

2. Plaintiff UAW's complaint is dismissed pursuant to Fed. R. Civ. P. 12 (b) (1).

3. The clerk is directed to close the file.

/s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-7261

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,
Appellant,

v.

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Appellee.

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 95-cv-01918)

Present: BECKER and ROTH, *Circuit Judges*; and, BARRY,* *District Judge*.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel January 30, 1997.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered April 21, 1996, be, and the same is hereby reversed and the cause remanded to the said District Court for further proceedings con-

sistent with the Opinion of this Court. Costs taxed against appellee. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/Robert A. Barth
Robert A. Barth
Chief Deputy Clerk

DATED: July 1, 1997

* Honorable Maryann Trump Barry, United States District Judge for the District of New Jersey, sitting by designation.

STATUTORY PROVISIONS

29 U.S.C.§ 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a

labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.